

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARTIN PORTILLO</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 220,294
<b>CARL COLE MASONRY</b>	)	
Respondent	)	
AND	)	
	)	
<b>(UNKNOWN)</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The Kansas Workers Compensation Fund (Fund) appealed the November 17, 1998, Order entered by Administrative Law Judge John D. Clark.

**APPEARANCES**

The Fund appeared by its attorney, Christopher J. McCurdy of Wichita, Kansas. Diggs Construction appeared by its attorney, Douglas D. Johnson of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record consisted of the transcript of the proceeding held before Administrative Law Judge John D. Clark on November 17, 1998, and the documents contained in the Division of Workers Compensation administrative file.

**ISSUES**

On November 17, 1998, the Fund's motion to add Diggs Construction as a respondent in these proceedings came on for hearing before the Administrative Law Judge. After hearing the arguments of the Fund and Diggs Construction, the Administrative Law Judge entered the Order dated November 17, 1998, that denied the Fund's motion.

On appeal, the Fund contends the Administrative Law Judge erred in denying the Fund's request to add Diggs Construction as a party.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

The Fund contends the November 17, 1998, Order was not a preliminary hearing order entered under K.S.A. 1998 Supp. 44-534a because the Order was not limited to the payment of medical and temporary total disability compensation. But the Fund contends, since the Order was not entered pursuant to the preliminary hearing statute, Appeals Board review of the Order is proper under K.S.A. 1998 Supp. 44-551(b).

The Appeals Board agrees that the Administrative Law Judge's Order is not a preliminary hearing order brought pursuant to the K.S.A. 1998 Supp. 44-534a. The Appeals Board, however, disagrees with the Fund's contention that the Appeals Board has jurisdiction to review the Order under K.S.A. 1998 Supp. 44-551(b).

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge . . . ." to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge . . . ."

The Appeals Board finds the Order which is the subject of this appeal, is not a final order, award, modification of an award, or preliminary award as contemplated by K.S.A. 1998 Supp. 44-551(b)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order the Administrative Law Judge has the authority to make, during the trial process, and the Appeals Board lacks jurisdiction to review the Order until it is contained in a final order or award.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Fund appeal from the November 17, 1998, Order entered by Administrative Law Judge John D. Clark, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Diane F. Barger, Wichita, KS  
Douglas D. Johnson, Wichita, KS  
Christopher J. McCurdy, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director